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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/582,568

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Yang Peng

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

BENGZON, GREG C

ART UNIT

PAPER NUMBER

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/582,568	<b>Applicant(s)</b> PENG ET AL.	
	<b>Examiner</b> GREG BENGZON	<b>Art Unit</b> 2444	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This application has been examined. Claims 1-18 are pending.

#### ***Making Final***

Applicant's arguments filed 04/06/2009 have been fully considered but they are not persuasive.

The Examiner is maintaining the rejection(s) using the same grounds for rejection and thus making this action FINAL.

#### ***Priority***

This application claims benefits of priority from PCT Application PCT/IB04/52634 filed December 2, 2004 and Foreign Application 200310123353.2 filed December 15, 2003. (CHINA)

The effective date of the claims described in this application is December 15, 2003.

#### ***Information Disclosure Statement***

The Applicant is respectfully reminded that each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in

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dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in 37 CFR 1.56.

There were no information disclosure statements filed with this application.

### ***Response to Arguments***

Applicant's arguments filed 04/06/2009 have been fully considered but they are not persuasive.

The Applicant presents the following argument(s) *[in italics]*:

*Silen discloses utilizing information regarding the operating variables available in an operating system to determine whether the operating system may support a rich media experience or a static environment. However, the operating variables of the operating system are not comparable to the "pre-stored content" recited in the claims as the operating system variables are not relevant to the downloaded content: as is recited in the claims. Rather the variables associated with the operating system are independent of the downloaded content.*

The Examiner respectfully disagrees with the Applicant.

The Examiner interprets the pre-stored content as bandwidth requirements that dictate the quality of the content that is desired for playback. Thus in the claimed invention the downloaded content is not independent of the operating variables.

Silen disclosed operating variables such as bandwidth requirements, said bandwidth requirements being relevant to the downloaded content.

Thus the operating variables disclosed by Silen are equivalent to the pre-stored content as claimed.

The Applicant presents the following argument(s) *[in italics]*:

*In addition, Silen fails to disclose the element of "playing the downloaded content combined with the pre-stored content," as Silen discloses the pre-stored content is associated with the operating system variables, which are not relevant to the downloaded content, as previously discussed.*

The Examiner respectfully disagrees with the Applicant.

The Examiner notes interprets the pre-stored content as download quality indicators and is not multimedia content.

Thus when Salmonsens-Silen disclosed using available bandwidth indicators to control the download quality then Salmonsens-Silen disclosed *playing the downloaded content combined with the pre-stored content.*

The Applicant presents the following argument(s) *[in italics]*:

*In addition, Silen teaches that the dynamic bandwidth determination is preformed by the server system during the downloading of the presentation to take advantage of the changes in bandwidth. This dynamic operation is described in para. 0022-0023, wherein the server issues packets of ever increasing size to determine the bandwidth.*

*According, the request for downloaded content (from the user) cannot include information regarding the bandwidth as the bandwidth is determined at the server side, after the request has been made.*

The Examiner respectfully disagrees with the Applicant.

While it is true that Silen dynamically adjusts for changes in bandwidth Silen is not limited to this embodiment.

Silen Paragraph 12 disclosed wherein the bandwidth detection is performed before the presentation is selected by the user for downloading/streaming.

The Applicant presents the following argument(s) [*in italics*]:

*In addition, even if the teachings of Silen were combined with that of Salmonsens, the combined device would fail to disclose the element of "receiving the downloaded content according to the detected bandwidth" as Salmonsens discloses that the transmission may be in different formats (NSTC, PAL) and, hence, different bit rate (bandwidth). However, the transmission in these formats fails to consider that the bandwidth of the channel may be varying such that there may be more, or less, available bandwidth than either of these formats requires.*

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The Examiner respectfully disagrees with the Applicant.

Silen disclosed *considering that the bandwidth of the channel may be varying such that there may be more, or less, available bandwidth than either of these formats requires.*

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salmonsens (US Patent 7209874) further in view of Silen (US Publication US 2002/0116518).

Salmonsens disclosed (re. Claim 1) method for playing a content, comprising the steps of receiving the downloaded content according with the detected bandwidth; (Salmonsens-Column 23 Lines 50-65) and playing the downloaded content combined with the pre-stored content. (Salmonsens-Column 24 Lines 35-40)

While Salmonsens substantially disclosed the claimed invention Salmonsens did not disclose reading a pre-stored content which include information relevant to a downloaded content; detecting available bandwidth; sending a request for downloading the downloaded content according to the information relevant to the downloaded content, wherein the request includes the information of the bandwidth.

Silen disclosed (re. Claim 1) reading a pre-stored content which include information relevant to a downloaded content; detecting available bandwidth; (Silen-Paragraph 19-23) sending a request for downloading the downloaded content according to the information relevant to the downloaded content, wherein the request includes the information of the bandwidth. (Silen-Paragraph 26-Paragraph 29)

Salmonsens and Silen are analogous art because they present concepts and practices regarding presentation of media over a network. At the time of the invention it would have been obvious to combine Silen into Salmonsens. The motivation for said combination would have been to enable adjusting a presentation frame size based upon detected bandwidth.

Claims 4,7 (re. method) is rejected on the same basis as Claim 1.

Claims 10,13,16 (re. a device) is rejected on the same basis as Claim 1.



Salmonsens-Silen disclosed (re. Claim 2,5,8,11,14,17) wherein the request includes a URL of a website on which the downloaded content is stored. (Silen-Paragraph 21)

Salmonsens-Silen disclosed (re. Claim 3,6,9,12,15,18) wherein the detecting step is arranged for detecting throughput of effective information transmitted within a specific period. (Silen-Paragraph 33)

### ***Conclusion***

**Examiner's Note:** Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure

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relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREG BENGZON whose telephone number is (571)272-3944. The examiner can normally be reached on Mon. thru Fri. 8 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571)272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. B./  
Examiner, Art Unit 2444

/William C. Vaughn, Jr./  
Supervisory Patent Examiner, Art Unit 2444